



07-18-05

AF <sup>IAW</sup>

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
(Attorney Docket No. AHP-98249)

|   |   |                           |
|---|---|---------------------------|
| In re Application of:                   | ) | Appln. No.: 10/054,288    |
|   | ) | Confirmation No.: 5326    |
| FRANS GARRIT DAVELAAR                   | ) | Customer No.: 25291       |
|   | ) | Group Art Unit: 1648      |
| Filed: November 13, 2001                | ) | Examiner: Shanon A. Foley |
|   | ) |                           |
| For: METHODS AND VACCINES FOR PROVIDING | ) |                           |
| IN OVO PROTECTION AGAINST TURKEY        | ) | Paper No.: 16             |
| RHINOTRACHEITIS                         | ) |                           |

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

TRANSMITTAL LETTER

Dear Sir:

Transmitted herewith in the above-referenced patent application is a Response to a Final Rejection. No additional fee is required.

A Notice of appeal is not being filed at this time to afford the Examiner the further opportunity to allow the application in view of the present response before the matter is taken to the Board of Patent Appeals and Interferences.

Thank you for your prompt attention to this matter.

Respectfully submitted,  
WYETH

Date: July 15, 2005

By: Anne M. Rosenblum  
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Anne M. Rosenblum  
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*In re* Patent Application of:

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RESPONSE TO A FINAL REJECTION

Dear Sir:

Responsive to the Office Action mailed May 16, 2005 in the above-referenced application, please consider Applicant's comments in a favorable light.

REMARKS

Reconsideration of this application is respectfully requested.

The Examiner sustained the rejection of Claims 1, 3-15 and 17-21 under 35 U.S.C. § 102 (b); the rejection of Claim 16 under 35 U.S.C. §§ 102 (b)/103(a); and the rejection of Claims 2 and 22 under 35 U.S.C. § 103(a) for reasons of record.

Based on the Examiner's rationale for not allowing this case in view of Applicant's amendment and arguments of record, it is clear that the issue of patentability rests on whether the transitional phrase "consisting essentially of" can define the scope of the claimed invention to exclude the interferon of Poston *et al.* Applicant submits that the facts establish that "consisting essentially of" is not equivalent to "comprising" under the circumstances of this case and, thus, the "consisting essentially of" claims sufficiently distinguish the claimed invention from the art.

The guidelines under M.P.E.P. § 2111.03 suggest that the Office may apply prior art under 35 U.S.C. §§ 102 and 103, and construe "consisting essentially of" the same as "comprising" in the absence of a clear indication in the specification or claims of what the basic and novel characteristics of the invention actually are. The recommendation is grounded on certain case law

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